



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 3, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-0582

Dear Mr. Bost:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112907.

The Texas Department of Human Services (the "department") received a request for information about any complaints concerning a nursing facility administrator and pending investigations into those complaints. Some of the requested information has been provided. You state that there exists no information responsive to some of the requested categories of information.¹ The remaining portion of the request seeks: (1) the names of witnesses interviewed or contacted in conjunction with a preliminary determination or referral or recommendation to revoke the named administrator's license, and (2) transcripts and tapes from witness interviews. You assert that this information is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with state and federal statutes and regulations.² You submitted to this office copies of the information at issue.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by statute. The information submitted to this office includes information created by the department under its

¹A governmental body is not required to provide information that does not exist at the time a request for records is submitted. Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information), 483 (1987) at 2, 452 (1986) at 3 (open records request applies to information in existence when request is received), 362 (1983) at 2 (city does not have to supply information which does not exist).

²We address only the information you seek to withhold. We note that included in the documents submitted to this office is the information that has already been released.

authority to investigate allegations of abuse or neglect in nursing facilities. Section 242.127 of the Health and Safety Code provides that

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

This provision, in conjunction with section 552.101 of the Government Code, protects from disclosure reports, records, and working papers used or developed in an investigation of abuse or neglect in a nursing facility. In accordance with section 242.127, the department adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions. Section 19.2010 provides in part as follows:

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to DHS as part of the investigation.

The records at issue are reports, records, and working papers used or developed by the department in conducting an investigation under section 242.127 of the Health and Safety Code. These records are generally confidential. We note that, pursuant to statute and departmental rule, the completed, de-identified final written investigation report must be disclosed. Also, the HCFA form 2567, a statement of deficiencies and plan of correction, must be disclosed provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988) at 5. Thus, although certain information is public by law, witness names are protected from disclosure. The witness interviews and statements that you marked are confidential and must be withheld in their entirety from disclosure.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 112907

Enclosures: Submitted documents

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